

## ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-795

DENVER L. GULLEY

APPELLANT

V.

CITY OF MOUNTAIN HOME and  
MUNICIPAL LEAGUE

APPELLEES

**Opinion Delivered** February 4, 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F609140]

AFFIRMED

**M. MICHAEL KINARD, Judge**

Appellant, Denver L. Gulley, appeals from a decision of the Workers' Compensation Commission denying benefits for an alleged injury. Gulley contended before the Commission that he sustained a compensable injury on or about August 10, 2006, while working for the City of Mountain Home. Appellees contended that Gulley could not prove a compensable injury because there were no objective findings of injury. The Commission found that there were no objective findings of injury and that Gulley failed to prove a compensable injury. We affirm.

On August 10, 2006, Gulley was working on a Vac-Con truck, which is used to unclog sewer lines. Evidence submitted before the Commission indicated that, on the day in question, the outside temperature ranged from ninety-five to one-hundred-and-nine degrees, including the heat index. At some point after beginning work at 8:00 a.m., Gulley began to feel weak and experienced a severe headache. Gulley continued to experience

symptoms and was eventually taken to the emergency room by another employee. The emergency room physician diagnosed Gulley with “heat exhaustion.” While at the emergency room, Gulley had an elevated blood pressure reading. Gulley had taken medication for high blood pressure for approximately one year prior to the date of the alleged injury. According to Gulley, he continued to experience symptoms following his release from the emergency room, including headaches, slurred speech, and memory problems. Gulley was referred to Dr. Demetrius Spanos, who performed a series of diagnostic tests, the results of which were normal. Dr. Spanos referred Gulley to Dr. Dan Johnson for neuropsychological testing. Based upon the results of Gulley’s neuropsychological testing, Dr. Spanos opined that he had an abnormality of processing information which Dr. Spanos attributed to his excessive heat exposure on August 10, 2006.

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission’s findings and we affirm those findings if they are supported by substantial evidence. *Morales v. Martinez*, 88 Ark. App. 274, 198 S.W.3d 134 (2004). Substantial evidence is evidence which a reasonable person might accept as adequate to support a conclusion. *Id.*

Under the Workers’ Compensation Act, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). Objective findings are defined as “those findings which cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16) (Repl. 2002). Gulley argues that the results of the neuropsychological testing constitute objective findings of injury

as defined under Arkansas Code Annotated section 11-9-102(16). Gulley refers to our decision in *Wentz v. Service Master*, 75 Ark. App. 296, 57 S.W.3d 753 (2001), in support of his argument, and characterizes our holding in *Wentz* as standing for the proposition that the results of neuropsychological testing constitute objective findings.

Subsequent to our decision in *Wentz*, we have held that the results of neuropsychological testing, standing alone, are not enough to establish a compensable injury. See *Rippe v. Delbert Hooten Logging*, 100 Ark. App. 227, 266 S.W.3d 217 (2007). In addition, we specifically overruled the holding in *Wentz* in *Parson v. Arkansas Methodist Hospital*, 103 Ark. App. 178, \_\_ S.W.3d \_\_ (2008). This court's prior decisions in *Rippe* and *Parson* are controlling regarding the acceptance of the results of neuropsychological testing as objective findings of injury. Therefore, under the law as it now stands, we cannot say that the Commission misapplied the law in finding that Gulley's neuropsychological testing results do not constitute objective findings of injury.

Gulley argues that the Commission erred in failing to consider his elevated blood pressure reading on the date of the alleged injury as an objective finding of injury. It is important to note that, although the Commission and the parties repeatedly refer to appellant's heatstroke/heat exhaustion injury, the injury being claimed by Gulley is a brain injury. He is claiming that he sustained neurological injury as a result of the heat exposure that led to his diagnosis of heat exhaustion. There is no diagnosis of heatstroke in the record. It is unclear whether Gulley's elevated blood pressure is connected in any way to the events on August 10, 2006, since Dr. Spanos opined that Gulley's elevated blood pressure reading

was “non-specific as to cause” considering his pre-existing hypertension. Additionally, because the injury alleged is a brain injury, we would be forced to resort to speculation or conjecture to determine that hypertension is an objective medical finding of the injury alleged, due to the fact that there is no evidence connecting Gulley’s hypertension to the brain injury he is alleging. Therefore, the Commission’s finding that there are no objective findings of injury is supported by substantial evidence.

Although we have affirmed the Commission’s decision that Gulley’s injury is not compensable based upon a lack of objective findings, we wish to address the Commission’s finding that the requirements of Arkansas Code Annotated section 11-9-114 (Repl. 2002) would need to be satisfied in order for Gulley to receive benefits for his alleged injury.<sup>1</sup> We agree with Gulley’s argument that the Commission erred in applying Arkansas Code Annotated section 11-9-114 in this case. Arkansas Code Annotated section 11-9-114 pertains to “a cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness or death.” Gulley has not alleged that he sustained any of the injuries listed in the statute. As stated above, Gulley is alleging that he sustained a brain injury. Cardiovascular, coronary, pulmonary, respiratory and myocardial infarction injuries do not apply because they pertain to the heart and lungs. Appellant has alleged no injury to either his heart or lungs.

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<sup>1</sup>Although the Commission stated that the requirements listed in Arkansas Code Annotated section 11-9-114 would need to be satisfied in this case, it never determined whether the requirements had been met.

Although it may appear as though appellant is claiming a “cerebrovascular accident,” an analysis of the meaning of that term shows that it does not apply in this case. Although Gulley claims that he sustained a brain injury resulting from “heatstroke,” that term does not necessarily correlate to a “cerebrovascular accident.” “Heatstroke” is defined as a condition caused by exposure to high environmental temperatures which results in a breakdown of the body’s temperature regulating mechanism. *Webster’s Third New International Dictionary* 1096 (1993). “Cerebrovascular” is defined as “relating to the blood supply to the brain.” *Stedman’s Medical Dictionary* 313 (26th ed. 1995). Appellant is not alleging that he sustained an injury affecting the blood supply to his brain, such as the sudden impairment of blood flow to the brain that results in what is commonly referred to as a “stroke,” which is another term for “cerebrovascular accident.” *Attorney’s Illustrated Medical Dictionary* S73 (1997). Instead, appellant is claiming that exposure to extreme heat resulted in neurological damage. Therefore, Arkansas Code Annotated section 11-9-114 would not apply in this case.

Affirmed.

GLOVER and MARSHALL, JJ., agree.